

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**DAVID POTTER, on behalf of himself and
others similarly situated,**

Plaintiff,

v.

3:22-cv-00869

TIOGA DOWNS RACETRACK, LLC,

Defendant.

**THOMAS J. McAVOY,
Senior United States District Judge**

**ORDER GRANTING PRELIMINARY APPROVAL OF COLLECTIVE
AND CLASS ACTION SETTLEMENT**

Having considered Plaintiff's Unopposed Motion for Preliminary Approval of Class and Collective Action Settlement, it is hereby ordered as follows:

1. Capitalized terms not otherwise defined in this Order shall have the definitions assigned to them in the Settlement Agreement.
2. The Court preliminarily approves the Settlement Agreement and all terms thereof and finds that the Settlement Agreement and all terms thereof are preliminarily fair, adequate, and reasonable.
3. For purposes of effectuating the Settlement Agreement only, the Court certifies the NYLL Class pursuant to Federal Rule of Civil Procedure 23, and certifies the FLSA Collective pursuant the Fair Labor Standards Act.
4. The Court appoints David Potter as representative of the NYLL Class and FLSA Collective.

5. The Court appoints Law Office of Matthew D. Carlson as Class/Collective Counsel.

6. The Court approves the Notice Form and notice plan (including the process of opting out and objecting to the settlement) pertaining thereto as set forth in Settlement Agreement.

7. The Court appoints CAC Services Group, LLC as Settlement Administrator. The Court directs the parties and the Settlement Administrator to proceed in accordance with the terms of the Settlement Agreement.

8. Within fifteen (15) business days after this Order, Defendant will provide the Settlement Administrator with the Class/Collective Data, in electronic form, including the names, last known mailing addresses, and social security numbers for each NYLL Class Member and each Potential FLSA Collective Member.

9. The Court schedules a Fairness Hearing regarding final approval of the Settlement Agreement, Class Counsel's request for attorneys' fees and costs, the Settlement Administrator's fees and costs, and the service award to the named Plaintiff for March 27, 2024 at 10:00 a.m. at the U.S. Courthouse in Binghamton, New York. The date and time of the Fairness Hearing shall be set forth in the Class Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted by the Court.

10. The Notice Form is the only notice required and constitutes the best notice practicable under the circumstances, and such Notice Form constitutes valid, due and sufficient notice to the Class Members, complying fully with the requirements of due

process and applicable state and federal law, including the Federal Rules of Civil Procedure, CPLR § 904, the United States Constitution, and any other applicable law.

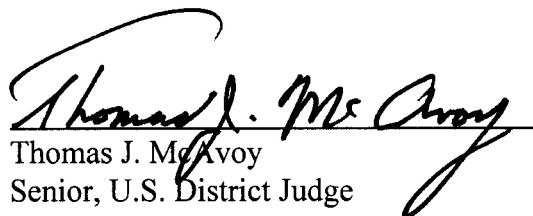
11. The Notice Form shall be sent by the Settlement Administrator to all NYLL Class and Putative FLSA Collective Members for whom it has mailing addresses via First Class United States Mail, in accordance with the terms of the Settlement Agreement.

12. All other current deadlines and hearings are hereby removed from the calendar.

13. If the Settlement Agreement does not receive final Court approval, the Parties will be returned to their respective positions nunc pro tunc as those positions existed immediately prior to the execution of the Settlement Agreement. The NYLL Class and FLSA Collective shall be decertified. This Order will become null and void, and shall not be considered in evidence or on the issue of class or collective certification, and Defendant shall retain all rights to oppose class and collective certification in any subsequent proceeding.

IT IS SO ORDERED.

Dated: October 10, 2023


Thomas J. McAvoy
Senior, U.S. District Judge